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SUPREME COURT OF UNITED STATES.

OCTOBER TERM, 1903.

No. 77.

WISCONSIN AND MICHIGAN RAILWAY COMPANY,
Complainant and appellant,

v.

PERRY F. POWERS, AUDITOR GENERAL OF THE STATE OF MICHIGAN,
Defendant and appellee.

BRIEF FOR THE DEFENDANT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

CHARLES A. BLAIR,
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ROGER IRVING WYKES,
Of Counsel.

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Statement.

The Constitution of the State of Michigan, adopted in 1850, is divided into articles, which are subdivided into sections. Article XIV is entitled, "Finance and Taxation;" article XV is entitled "Corporations;" article XVIII is

entitled "Micellaneous Provisions," and article XIXa is entitled "Railroads."

Section 1 of article XV is as follows:

> "Corporations may be formed under general laws, but shall not be created by special act except for municipal purposes. All laws passed pursuant to this section may be amended, altered or repealed. But the legislature may, by a vote of two-thirds of the members elected to each house, create a single bank with branches."

Section 2 of article XVIII relates to the exercise of the right of eminent domain. Section 1 of article XIX A provides:

> "The legislature may, from time to time, pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight on different railroads in this State."

In 1873 the present general railroad law was enacted, entitled "An Act to revise the laws providing for the incorporation of railroad companies and to regulate the running and management, and to fix the duties and liabilities of all railroad and other corporations owning or operating any railroad in this State." This law is also divided into articles, which are subdivided into sections; article III being entitled "Taxation," and article V, "Miscellaneous Provisions," and containing, in section 11, the following provision:

> "This act may at any time be altered, amended, or repealed, but such alteration, amendment, or repeal shall not affect the rights of property of companies organized under it; nor shall the dissolution of any such company take away or impair any remedy given for or against such corporation, its stockholders or officers, for any liability which shall have been previously incurred; and the provisions of this act shall apply to all companies incorporated or existing under the laws of this State, except the Paw Paw railroad company, which shall in no manner be affected by

> the passage of this act, in respect to the franchises and privileges heretofore granted to said company."

This law since its enactment in 1873 has, from time to time, been altered and amended to meet changing conditions and arising necessities; and in 1893 (by act 129, set forth in full in appendix), section 3 of article III, providing the method and rate of taxation was amended, a proviso being added which read:

> "That the rate of taxation fixed by this act or by any other law of this State shall not apply to any railway or railroad company hereafter building and operating a line of railroad within this State north of parallel forty-four of latitude until the same has been operated for the full period of ten years, unless the gross earnings shall equal four thousand dollars per mile, except in so far as said line so built shall extend south of said parallel, but no such company shall be entitled to the immunity from taxation herein provided, when the same is owned or operated by existing companies, until the report of earnings to the Commissioner of Railroads required by the laws of this State, containing the earnings of such lines hereafter built, separate and distinct from the earnings of existing lines, shall be made and filed."

In October, 1893, the Menominee & Northern Railroad Company was created and organized under the general railroad laws of the State of Michigan, its rights and privileges being immediately thereafter acquired by the complainant (act 102 of 1893), which constructed its line of road in the State of Michigan, and became entitled to the exemption contained in the proviso above quoted.

In 1897 (by act 228, set forth in full in appendix), the proviso incorporated in section 3 of article III of the general railroad law of the State of Michigan by act 129 of the public acts of 1893, was repealed, and the exemption from taxation therein contained abrogated, and subsequently the Commissioner of Railroads computed the taxes to be paid by

the complainant, in accordance with the general railroad law as amended by said act 228 of the public acts of 1897, and filed said computation with the Auditor General, as required by law.

The bill of complaint in this case was filed in the circuit court for the eastern district of Michigan to restrain the collection of those taxes, on the principal ground that the act of 1893, granting exemption to the complainant upon a compliance with its provisions, became and constituted a contract between it and the State, which could not be revoked or altered, and that, therefore, the act of 1897 repealing and abrogating such exemption contravenes the Federal Constitution as violating the obligation of contract. The bill of complaint was demurred to, the grounds of demurrer being set forth as follows:

> "1. That act No. 129 of the public acts of 1893 (approved May 27, 1893), set forth in said bill of complaint and relied upon by said complainant as constituting a contract between itself and the State of Michigan, did not create and does not at the present time constitute a valid contract or a part of a valid contract between the said State and said complainant, exempting said complainant from taxation for the period therein specified.
>
> "2. That act No. 228 of the public acts of 1897 (approved June 4, 1897), set forth in said bill of complaint, repealing and abrogating the exemption from taxation granted in said act No. 129 of the public acts of 1893, and under which this defendant and the Commissioner of Railroads have acted in computing the taxes of the said complainant, is a valid and constitutional law.
>
> "3. That this proceeding, though nominally against this defendant, is in fact a suit against the State of Michigan."

This demurrer was sustained by the circuit court, without opinion, and the case is here on error to that court.

Argument.

Does the act of 1897 have the effect of repealing the act of 1893, containing the exemption in question.

In its brief in the court below, complainant and appellant argued that the act of 1897 (228) even though valid did not have the effect to repeal the previous act of 1893 (129). This question has been passed upon adversely to that claim by the State supreme court in the case of *Manistee & Northeastern Railroad Company* v. *Commissioner of Railroads* (118 Mich. 349), and this is final, under the rule stated by this court in the late case of *Northern Central Railway Company* v. *Maryland,* as follows:

> "Where a contract is claimed to arise from a State law and it is held below that a subsequent statute has repealed the alleged contract and effect is thereby given to the subsequent law, the mere question whether the alleged contract has been repealed by the subsequent law is a State and not a Federal question. In such a case this court concerns itself not with the question whether the State law, from which the contract is asserted to have arisen, has been repealed, but proceeds to determine whether the repeal was void because it produced an impairment of the obligations of the contract within the purview of the Constitution of the United States. In other words, where the State court has given effect to a subsequent law, this court decides whether such effect, so given by the State court, violates the Constitution of the United States. *Gulf & Ship Island Railway Company* v. *Hewes,* 183 U. S. 66." (187 U. S. 261.)

The repeal having taken place, we, therefore, consider whether it was beyond the power of the State to effect such repeal.

Points.

I.

In considering whether a State has contracted away its sovereign powers, nothing is to be taken against the State by intendment.

The rule that nothing is to be taken by intendment against the State is particularly applicable to claimed exemptions from taxation. The right of taxation is a sovereign right, inherent in every sovereignty whose existence and exercise are essential to the existence and continuance of government, and although in certain instances it may be granted away, every presumption is against the grant, which is not to be extended beyond what is actually expressed. The exemption must be clearly made out, and doubt is fatal to the claim. In the leading case of *Providence Bank* v. *Billings,* Chief Justice Marshall, speaking for the court, says:

> "That the taxing power is of vital importance; that it is essential to the existence of government; are truths that it cannot be necessary to reaffirm. They are acknowledged and asserted by all. It would seem that the relinquishment of such a power is never to be assumed. * * * As the whole community is interested in retaining it undiminished, that community has a right to insist that its abandonment ought not to be presumed in a case in which the deliberate purpose of the State to abandon it does not appear." (4 Peters 561.)

Gilman v. Sheboygan, 67 U. S. 510;
Ohio, L. Ins. & T. Co. v. Debolt, 57 U. S. 435;
Railroad Co. v. Maryland, 10 How. 393;
Bank v. Skelley, 1 Black, 447;
Railroad Tax, 18 Wall. 225;

Railroad Co. v. Loftin, 98 U. S. 559;
Newton v. Board of County Commissioners, 100 U. S. 561;
Vicksburg, etc. R. Co. v. Dennis, 116 U. S. 665, 668;
Southwestern R. R. Co. v. Wright, 116 U. S. 231, 236;
Erie R. Co. v. Pennsylvania, 21 Wall. 492, 499;
Memphis Gaslight Co. v. Shelby Taxing Dist., 109 U. S. 39, 401;
Yazoo, etc. R. Co. v. Thomas, 132 U. S. 174, 185.

The later cases have repeatedly affirmed and reiterated the views of Chief Justice Marshall, as expressed in the case of *Providence Bank* v. *Billings.* In *Vicksburg, etc. R. Co.* v. *Dennis,* supra, the language used was:

> "It has been said that 'Neither the right of taxation nor any other power of sovereignty will be held by this court to have been surrendered, unless such surrender is expressed in terms too plain to be mistaken;' that exemption from taxation 'should never be assumed unless the language used is too clear to admit of doubt;' that 'nothing can be taken against the State by presumption or inference; the surrender, when claimed, must be shown by clear, unambiguous language, which will admit of no reasonable construction consistent with the reservation of the power; if a doubt arise as to the intent of the legislature, that doubt must be solved in favor of the State, that a State 'cannot by ambiguous language be deprived of this highest attribute of sovereignty;' that any contract of exemption 'is to be rigidly scrutinized, and never permitted to extend, either in scope or duration, beyond what the terms of the con-

> cession clearly require;' and that such exemptions are regarded 'as in derogation of the sovereign authority and of common right, and therefore not to be extended beyond the exact and express requirement of the grants, construed strictissimi juris.'" (116 U. S. 668.)

II.

The grant of exemption claimed was a mere gratuity which has not the elements of, and cannot be construed into, a contract.

The act of 1893 (129) creating the exemption, was a mere bounty law. Any corporation, or set of persons desiring to form a corporation and complying with its requirements, would be entitled to the bounty—the exemption from taxation—therein held out. There was no stipulation that that bounty should not be withdrawn or repealed. So long as it existed, all persons and corporations having the ability and desiring to avail themselves of its advantages could do so; but it was subject to withdrawal by the legislature at any time.

In *Manistee & Northeastern Railroad Co.* v. *Commissioner of Railroads* (118 Mich. 349), the identical question presented in this case was before the supreme court of the State of Michigan, which held, that this statute did not constitute a contract between the State of Michigan and the railroad companies complying with its provisions, to exempt such railroad companies from taxation until the same had been operated for the full period of ten years, saying

> "The question whether such a statute creates a contract, or confers a gratuity, or bounty, or privileges, existing bene placitum, is no longer debatable. It is settled by a long line of decisions that they are mere gratuities. The essential element of a

binding contract, viz., a consideration, is wanting. The question is ably and fully discussed in the following cases: East Saginaw Mfg. Co. v. City of East Saginaw, 19 Mich. 259 (2 Am. Rep. 82); Welch v. Cook, 97 U. S. 541; Tucker v. Ferguson, 22 Wall. 527; Grand Lodge F. & A. Masons of Louisiana v. City of New Orleans, 166 U. S. 143; West Wisconsin R. Co. v. Board of Supervisors, 93 U. S. 595." (118 Mich. 350, 351.)

Christ Church v. Philadelphia, 24 How. 300;
Salt Co. v. East Saginaw, 13 Wall. 377, 379.

In *Tucker* v. *Ferguson*, supra, certain lands were granted by congress in 1856 to the State of Michigan, for the purpose of aiding in the construction of railroads. In 1857 the State accepted the grant of congress and gave to the Flint & Pere Marquette Railway Co. all lands granted by congress to the State for the construction of the road upon their right of way, by an act which provided that those lands should be exempt from taxation for the period of seven years. Those lands were mortgaged to the complainants as trustees to secure bonds upon which money was raised for the construction of the road. In 1866 and 1868, from time to time, statutes were enacted continuing the exemption from taxation; and in 1871 the lands were exempted from taxation for a period of three years. Prior to the expiration of the period of exemption fixed in that act, the State sought to tax the lands, and its right to do so was resisted upon the theory that the act of 1871 constituted a contract exempting them from taxation for the period therein specified. This court held that the grant of exemption was a mere gratuity, subject to recall by the State at its option. It was there said:

> "The provisions of the 37th section of the act of 1871, exempting the lands specified from local taxation until three years from the first of April, 1871, which period has not elapsed, was not a contract. There was no consideration. The company was required to do nothing, and did nothing, in return. As between individuals the stipulation would belong to the category of nude pacts. It has no higher character because one of the parties was a State, the other a corporation, and it was put in the form of a statute. It was the promise of a gratuity spontaneously made, which might be kept, changed or recalled at pleasure." (22 Wall. 574.)

The early case of Tucker v. Ferguson was reaffirmed in *West Wisconsin Railway Company* v. *Board of Supervisors*, supra, where, under facts similar to those in the last mentioned case (though more strongly favoring the existence of a contract to exempt from taxation, by reason of the fact that the railroad company was required to perform certain acts within a period specified, in order to obtain the exemption), after reviewing the case of *Tucker* v. *Ferguson*, it was said:

> "We hold here, as we held there, that the exemptions in question were gratuities offered by the State, without any element of a contract. There was no assurance or intimation that they were intended to be irrevocable, or that the laws in question should not be at all times subject to modification or repeal in like manner as other legislation. If a different intent had existed, it would doubtless have been clearly manifested by the language employed. It would not have been left to encounter the possible results of such a struggle and conflict as have occurred in this litigation. The State asked for no promise from the company, and the company gave none. It was optional with the company to mortgage its lands or not, and to complete or not to com-

plete the road within two years. The early completion of the road was beneficial to the company as well as to the public. Until then, there could be no income, and there was a constant loss of interest. Every step of progress added to the value of the lands of the company through which the road was to pass. Every party was at liberty to take its own course. If the company came within the condition specified in the act of 1870 it would be in a position to take the gratuity offered by that act. If this were so, the State might continue or withdraw that gratuity when it took effect, as it might deem best for the public welfare; and it possessed the same power with reference to the exemption created by the prior act of 1864, while that act was operative. Neither party was, nor was intended to be, in anywise bound to the other. The State was at all times wholly unfettered as to both exemptions. The company chose to bring itself within the condition of the act of 1870. The State chose to continue the gratuity for a time, and then withdrew it. The exemption given by both acts was abrogated a year before the bonds of the last series were issued, and before the first term of exemption expired or the second began. The State did what it had an unqualified right to do. In such cases a reasonable doubt is fatal to the claim." (93 U. S. 597, 598.)

In *Welch* v. *Cook*, supra, a statute was passed in the District of Columbia exempting from general taxes for ten years from June, 1873, the real and personal property which should thereafter be actually employed within the limits of the District of Columbia for manufacturing purposes. In 1875 the exemption was withdrawn and proceedings were taken to tax real estate which had been invested in and was employed for manufacturing purposes under such circumstances as to entitle it to the exemption contained in the act of 1873. The validity of these taxes was contested, on the

ground that the exemption offered and the investment of large sums of money in a manufacturing plant constituted an irrevocable contract. It was there said, of the act creating the exemption:

> "It does not create a contract in the sense that it cannot be repealed. It has been frequently held that the incorporation of a company by special charter, with the exemption of its lands or other property from taxation, creates, upon the acceptance of the charter, a contract which will insure that exemption during the period specified. But the present case does not come within that rule. This is a bounty law, which is good as long as it remains unrepealed; but there is no pledge that it shall not be repealed at any time." (97 U. S. 542.)

These cases establish clearly the character of the legislation in question. There was no consideration on the part of the railroad companies for the grant made, and a consideration is as essential to the existence of a contract between the State and an individual as between individuals. So fast as the exemption was earned, the right thereto became vested, and the consideration for its support was the duties which had been performed on the part of the railroad companies. Those companies were not compelled to perform any duties by the act creating the exemption, and any acts which they may have performed were voluntary, the performance of which can be discontinued at their pleasure. It is certainly a peculiar circumstance if the State be bound for a period of ten years, and the railway company be not bound at all.

III.

Effect of reserved right to alter, amend or repeal acts of incorporation, as contained in Constitution and statute, as construed by State court.

The Constitution of the State of Michigan in force at the time of the enactment of the general railroad law and at the time of the incorporation into that law of the exemption contained in act 129, public acts of 1893, reserved the right to alter, amend, and repeal corporate charters and privileges as follows:

> "Corporations may be formed under general laws, but shall not be created by special act except for municipal purposes. All laws passed pursuant to this section may be amended, altered or repealed."

And the general railroad law, enacted in 1873, under which the railroad company to whose rights complainant succeeded, was organized, and of which the exemption claimed constitutes a part, contained in section 11 of article V, the provision:

> "This act may at any time be altered, amended or repealed, but such alteration, amendment or repeal shall not affect the rights of property of companies organized under it," etc.

The reservations of the right to alter, amend and repeal acts of incorpration have been before the supreme court of Michigan in numerous instances, and that court has been uniform in its decisions to the effect that all acts of incorporation, and rights dependent upon their existence, are subject to this reserved power, and subject in all particulars to the control of the legislature.

Detroit v. Detroit & Howell Plank Road Co., 43 Mich. 140, 147;
Detroit St. Ry. v. Guthard, 51 Mich. 180, 182;

Detroit v. Railway, 76 Mich. 421, 426;
Mason v. Perkins, 73 Mich. 303, 318;
Bissell v. Heath, 98 Mich. 472, 478;
Attorney Genereal v. Looker, 111 Mich. 498, 501, —affirmed 179 U. S. 46;
Smith v. Lake Shore & M. S. Ry. Co., 114 Mich. 460, 472.

In the early case of *Detroit* v. *Detroit & Howell Plank Road Co.*, supra, Judge Cooley, in passing upon the authority of the legislature to amend and repeal corporate charters where the power to do so was reserved, said

> "But for the provision in the Constitution of the United States which forbids impairing the obligation of contracts, the power to amend and repeal corporate charters would be ample without being expressly reserved. The reservation of the right leaves the State where any sovereignty would be if unrestrained by express constitutional limitations, and with the powers which it would then possess. It might therefore do what it would be admissible for any constitutional government to do when not thus restrained, but it could not do what would be inconsistent with constitutional principles." (43 Mich. 147.)

In *Smith* v. *Lake Shore & Michigan Southern Railway Company*, supra, in considering the right of the legislature under its reserved constitutional and statutory authority to alter, amend or repeal corporate charters, to amend the provisions of the general railroad law (the law in question in this case) relating to rates of transportation, the court, after quoting with approval the language used by Judge Cooley in *Detroit* v. *Detroit & Howell Plank Road Co.*, supra, says:

"We think this is a fair statement of the effect of this reservation, and that, if the legislation in question can be construed as depriving the respondent of its property, it is invalid, as conflicting with other constitutional provisions. But we do not think that such is the effect of this legislation. * * * My conclusions are that the regulation is not unconstitutional as applied to roads within the control of the legislature, and that the respondent road, by its consolidation—formed, as it is, by a consolidation under an act passed since the enactment of the constitution reserving the power to alter, amend, or repeal—is subject to the general control of the legislature." (114 Mich. 473, 475.—Case reversed on other grounds, 173 U. S. 184.)

In *Attorney General* v. *Looker,* supra, the authority of the legislature to so alter acts of incorporation as to provide for a cumulative system of voting, by which a minority of the stockholders could acquire representation on the board of directors, was in question, and it was held that, acting under the power reserved by the Constitution to alter or repeal corporate charters, such legislation was competent, and that it was not objectionable upon the ground that it deprived the stockholders of vested rights; the court there reviews the cases at length and, in answer to the claim that the law changed the contract between the stockholders, and was therefore within the constitutional provision which forbids impairing the obligation of contracts, says that:

"It would seem to be a complete reply to this view to say that the stockholders knew when they entered into this corporation that the constitution reserved to the legislature the right to amend, alter, or repeal the law under which the corporation was organized. 1 Thomp. Corp. sec. 89. The stockholders are as much bound by this constitutional provision as though it were contained in the articles of incorporation. Parker v. Railroad Co., 109 Mass. 506. In

this case it was said: 'Many cases have arisen in this court involving the construction and application of the power to amend or alter charters. The reservation of power is broad and comprehensive. Whatever may be its limitation, it at least reserves to the legislature the right to make any reasonable amendments, regulating the mode in which the franchise granted shall be used and enjoyed, which do not defeat or essentially impair the object of the grant, or take away any property or rights which have become vested under a legitimate exercise of the powers granted.'" (111 Mich. 505; same case 179 U. S. 46.)

The construction by the supreme court of Michigan of the authority of the legislature under the reserved right to alter, amend or repeal corporate charters, contained in the State Constitution, is final and conclusive, and will be followed by the Federal courts.

Luther v. Borden, 7 How. 40;
Bucher v. Cheshire R. Co., 125 U. S. 555;
Pittsburg, etc. R. Co. v. Backus, 154 U. S. 421;
McElvaine v. Brush, 142 U. S. 155;
Miller's Exrs. v. Swann, 150 U. S. 132.

IV.

Effect of reserved right to alter, amend or repeal, as construed by Federal courts.

The Federal cases which uphold the right of a State to alter or amend a corporate charter where the right so to do is reserved in the Constitution, a prior general law, or the act of incorporation, are numerous, and sustain the following propositions:

1. The history of the inclusion in corporate charters of a clause reserving the right to alter, amend or repeal, indicates that such practice grew from a suggestion contained in the opinion of Mr. Justice Story in the Dartmouth College case (4 Wheat. 712) to the effect that corporations and corporate charters might by such reservation be kept under control.

2. Where the right to repeal, alter or amend is reserved, the corporate charter and all rights and privileges held thereunder are subject to legislative control, and may be repealed or taken away at the will of that body.

3. The sole limitation upon the authority of the legislature, where the right to repeal, alter or amend has been reserved, is, that vested rights which can be held independently of the charter or the charter contract, can not be interfered with.

4. An exemption from taxation is not a vested right, and may be taken away or altered where the right to alter, amend or repeal is reserved.

As said in *Spring Valley Water Works* v. *Schottler*, in speaking of the reservation, in the Constitution of 1849 of the State of California, of the right to alter, amend or repeal corporate charters, in terms similar to the provision in our Constitution,

> "The reservation of the power to alter or repeal the charters of corporations was [is] not new, for almost immediately after the judgment of this court in the Dartmouth College case (Dartmouth College v. Woodward 4 Wheat. 518), the states, many of them, in granting charters, acted on the suggestion of Mr. Justice Story in his concurring opinion (p. 712), and inserted provisions by which such authority was expressly retained." (110 U. S. 352.)

Greenwood v. Freight Co., 105 U. S. 13;
Citizens' Savings Bank v. Owensboro, 173 U. S. 651.

The Federal cases where this question has been presented have for the most part been analagous to the case at bar, and arose where an attempt had been made on the part of the State to take from the corporation an exemption from taxation which was claimed on the part of the corporation to be the subject of a contract beyond State interference.

In *Tomlinson* v. *Jessup* (15 Wall. 454), which is on all fours with the case at bar, the Northwestern Railroad Company was incorporated by the legislature of South Carolina in 1851 and at the time of its incorporation a general law of the State was in existence which provided that the charter of every corporation subsequently granted, and any renewal or amendment thereof, should be subject to amendment, alteration or repeal by legislative authority, unless the act granting the charter, renewal or amendment in express terms excepted it from the operation of that law. In 1855 an amendment to the company's charter was passed exempting it from taxation during the continuance of the charter; this amendment contained no provision excepting it from the operation of the provisions of the general act of 1841. In 1868, under a new constitution, acts were passed subjecting the property of the Northwestern Railroad Company to taxation, and a bill was filed to enjoin the officers of the State of South Carolina from levying a tax upon the property of the road. In delivering the opinion of the court, Mr. Justice Field, said of the act of 1841:

> "The provisions of that law, therefore, constituted the condition upon which every charter of a corporation subsequently granted was held, and upon which every amendment or modification was made. They were as operative and as much a part of the charter and amendment as if incorporated into them. * * * The power reserved to the State by the law of 1841 authorized any change in the contract as it originally existed, or as subsequently modified, or its entire revocation. The original corporators or subsequent stockholders took their interests with knowledge of

the existence of this power, and of the possibility of its exercise at any time in the discretion of the legislature. The object of the reservation, and of similar reservations in other charters, is to prevent a grant of corporate rights and privileges in a form which will preclude legislative interference with their exercise if the public interest should at any time require such interference. It is a provision intended to preserve to the State control over its contract with the corporators, which without that provision would be irrepealable and protected from any measures affecting its obligation. * * * Immunity from taxation, constituting in these cases a part of the contract with the government, is, by the reservation of power such as is contained in the law of 1841, subject to be revoked equally with any other provision of the charter whenever the legislature may deem it expedient for the public interests that the revocation shall be made. The reservation affects the entire relation between the State and the corporation, and places under legislative control all rights, privileges, and immunities derived by its charter directly from the State." (15 Wall. 457, 458, 459.)

The rule laid down in *Tomlinson* v. *Jessup* has been restated and reaffirmed in the following cases, and remains settled law to the present day:

Hoge v. Railway Co., 99 U. S. 349, 351;
Greenwood v. Freight Co., 105 U. S. 13;
Railroad Co. v. Maine, 96 U. S. 499;
Louisville Water Co. v. Clark, 143 U. S. 1;
Sinking Fund Cases, 99 U. S. 700;
Pearsall v. Great Northern Ry., 161 U. S. 663;
Covington v. Kentucky, 173 U. S. 232;
Citizens' Savings Bank v. Owensboro, 173 U. S. 636;

United States v. Union Pacific Ry., 160 U. S. 37, and cases cited.

See also:

Miller v. State, 82 U. S. 478, 499;
Holyoke Co. v. Lyman, 82 U. S. 500;
Pennsylvania College Cases, 80 U. S. 190;
Spring Valley Water Works v. Schottler, 110 U. S. 347;
Union Passenger Railway Co. v. Philadelphia, 101 U. S. 528.

In *Railroad Co.* v. *Maine*, supra, the Maine Central Railroad was the result of the consolidation of two lesser specially chartered roads, and by such consolidation became a corporation, existing under and subject to the general law of the State, which reserved, in an act passed in 1831, the right to amend, alter or repeal all acts of incorporation. Certain taxes imposed upon the company were resisted upon the ground that the statute in question was a violation of the obligation of contract. Of this objection it was said:

> "By the reservation in the law of 1831, which is to be considered as if embodied in that act [a subsequent law], the State retained the power to alter it in all particulars constituting the grant to the new company, formed under it, of corporate rights, privileges and immunities. The existence of the corporation, and its franchises and immunities, derived directly from the State, were thus kept under its control. Rights and privileges acquired by the company not constituting a part of the contract of incorporation, stand upon a different footing. But no such rights or interests are here involved." (96 U. S. 511.)

In *Hoge* v. *Railroad Company*, supra, the facts presented were similar to those passed upon in the case of *Tomlinson* v. *Jessup*, and in speaking of the general law of the State of South Carolina reserving the right to alter, amend or repeal, and in holding that under that reserved power an exemption from taxation could be taken away, it was said:

> "Its provisions constituted the condition upon which every charter was afterwards granted, amended or modified. They formed as much a part of the new or amended charter as if they had been originally embraced in it." (99 U. S. 353.)

In *Union Passenger Railway Co.* v. *Philadelphia*, supra, a corporation was created by statute to construct and operate a street railway in the city of Philadelphia, the act of incorporation containing a provision that the company should pay a license fee of $30 per year for each car operated. Four years later by statute the license fee was increased to $50 per year; and after complying with the amended law for a number of years, the company refused to pay the increased tax required, and upon suit brought to compel its payment it was held that under the power reserved in the Constitution to alter or revoke corporate charters, the State had ample power to make the amendment, and no injustice was done to the corporation, it being there said:

> "Power to alter, revoke or annul any charter of incorporation was vested in the legislature by the Constitution more than a quarter of a century before the defendant company was incorporated. Even when the language of the charter is sufficient to amount to a contract, it was twice admitted by Mr. Justice Story, in *Trustees of Dartmouth College* v. *Woodward*, that alterations and amendments may be made in the charter where the power for that purpose is reserved to the legislature in the act of incorporation. 4 Wheat. 518, 708, 712. Acts of incorporation granted subsequently to the adoption of the Constitution must be construed as if the provision of the in-

strument in question was embodied in the charter." (101 U. S. 539.)

In *Louisville Water Co.* v. *Clark*, supra, the corporation was created by an act passed in 1854. In 1856 a general law was enacted reserving the right to amend or alter all statutes of incorporation at the will of the general assembly, unless a contrary intent was therein plainly expressed, provided that no amendment or repeal should impair other rights previously vested. In 1882 an act was passed exempting the water company's property from taxation. Subsequently and in 1886 it was provided that all property within the State, with certain exceptions, should be assessed and taxed at a uniform rate, and pursuant to this act a tax was levied upon the property of the Louisville Water Company, which filed a bill to prevent the seizure and sale of its property for the tax, claiming that the law of 1882, granting it exemption from taxation, constituted a contract between it and the State, which could not be withdrawn by a subsequent general assembly. The court, however, held that the exemption from taxation could be repealed without impairing the obligation of the contract, saying, through Mr. Justice Harlan:

> "In short, the immunity from taxation granted by the act of 1882 was accompanied by the condition—express in the act of 1856 and made a part of every subsequent statute, when not otherwise expressly declared—that, by amendment or repeal of the former act, such immunity could be withdrawn. Any other interpretation of the act of 1856 would render it inoperative for the purposes for which, manifestly, it was enacted." (143 U. S. 12.)

In *Covington* v. *Kentucky*, supra, the city of Covington was authorized by statute to build and operate a water system, applying the net earnings to the construction of roads, and it was provided in the act that the property used for that purpose "shall be and remain forever exempt from State, county and city tax." A general statute enacted in 1856 reserved the right to alter, amend or repeal statutes, provided

vested property rights were not interfered with. The supreme court of the State of Kentucky decided that the water works was not a governmental institution, placing it, so far as the question of taxation was concerned, upon the same ground as a private corporation. In 1891 the Constitution of Kentucky was amended, requiring all property to be uniformly taxed; and pursuant thereto tax was imposed upon the property invested in the water works of the city of Covington, which was resisted upon the ground that the statute creating the exemption constituted a contract between the city and State. It was held that in view of the reserved power contained in the general statute, any contract which had been entered into was subject to alteration, as the statute reserving the right to amend or repeal was itself a part of that contract, the court saying:

> "There was in the act no 'plainly expressed' intent never to amend or repeal it. It is true that the legislature said that the reservoirs, machinery, pipes, mains and appurtenances, with the land upon which they were situated, should be forever exempt from State, county and city taxes. But such a provision falls short of a plain expression by the legislature that at no time would it exercise the reserved power of amending or repealing the act under which the property was acquired. The utmost that can be said is that it may be inferred from the terms in which the exemption was declared, that the legislature had no purpose at the time the act of 1886 was passed to withdraw the exemption from taxation; not that the power reserved would never be exerted, so far as taxation was concerned, if in the judgment of the legislature the public interest required that to be done. The power expressly reserved to amend or repeal a statute should not be frittered away by any construction of subsequent statutes based upon mere inference. Before a statute—particularly one relating to taxation—should be held to be irrepealable, or not subject

> to amendment, an intent not to repeal or amend must be so directly and unmistakably expressed as to leave no room for doubt; otherwise, the intent is not plainly expressed. It is not so expressed when the existence of the intent arises only from inference or conjecture." (173 U. S. 238, 239.)

The examination of the Federal cases enunciating the same principles as those above set forth might be carried out to much greater length; but sufficient cases have been adverted to, to indicate clearly the rulings upon the question presented; and under the authority of the above cases, I assert with confidence that the act of 1897 is valid and constitutional, and does not violate the obligation of contract.

V.

Right of repeal, alteration and amendment, reserved in fundamental law, applicable to, and gives right to withdraw exemptions from taxation contained in acts of incorporation.

The complainant seeks to avoid the effect of the reservation by the Constitution (art. xv, § 1), of the right to alter, amend and repeal all acts of incorporation, claiming that as the Constitution is divided into articles, one of which is entitled "Finance and Taxation," (xiv) and another of which is entitled "Corporations," (xv) and the general railroad law is also divided into separate articles, one of which refers to taxation (iii), the exemption from taxation incorporated in the general railroad law by amendment in 1893 was enacted pursuant to the article of the Constitution relating to taxation and not pursuant to section 1 of the article relating to corporations, and that, therefore, it is not within the provision of that section that "all laws passed pursuant to this section may be altered, amended or repealed." The claim may be stated, in other language, thus,—that it is within the

authority of the legislature to include within an act for the incorporation of railroad companies an irrevocable contract of exemption from taxation, notwithstanding the reservation by the Constitution of the right to alter, amend or repeal corporate charters.

At the risk of adding dignity to the objection, we will consider it at some length. This reservation came into the organic law of Michigan in 1850. Its purpose was to maintain control over corporate charters, rights and privileges, and to prevent the conferring of irrevocable privileges, whether of taxation or otherwise, upon corporations. Immunity from taxation was unquestionably one of the privileges desired to be kept under control and the constitutional provision must be given a liberal construction to carry out its evident purpose.

(*a*) Complainant's claim is based upon a fallacy in assuming that a State statute is enacted in pursuance of authority conferred by any particular paragraph or article of a State Constitution. All State laws are enacted by the legislature in pursuance of the general legislative power conferred upon it by the Constitution. The State Constitutions and the specific provisions contained therein (with certain limited exceptions), are not designed to grant to the several legislatures the right to pass enactments of a specified character. The fundamental canon is that the State Constitutions operate as a limitation and not a grant of power, and that the several legislatures possess all legislative power not delegated to the Federal government or withheld by the provisions of the State Constitution. This is true in Michigan (*Attorney General* v. *Preston*, 56 Mich. 177), and section 1 of article XV has been held to operate as a limitation of power. (*Nelson* v. *McArthur*, 38 Mich. 204).

The inclusion of section 1 of article XV in the Constitution limited the power of the legislature to create corporations and required their creation by general laws, while, in the absence of that provision, its power would have been plenary, and its authority sufficient to create by general or

special laws. The authority, therefore, of the legislature to pass statutes relating to particular subjects comes, not from any particular section or article of the Constitution, but from its inherent character as a legislative body, possessing all power not inhibited, and specific constitutional provisions operate simply as limitations.

The Constitution contains a separate article which relates to railroads and the establishing of maximum rates for the carriage of passengers and freight. If force be given to complainant's claim, it must likewise be held that the provision of the general railroad law establishing reasonable maximum rates of charge is adopted pursuant to the provision of the Constitution relating to railroads and is not within the reserved power. Of this question the State supreme court has taken the opposite view and held that the provision of the general railroad law fixing maximum rates for the carriage of passengers is within the reserved power, to amend, of the fundamental law. (*Smith* v. *Lake Shore & Michigan Southern Railway Company*, 114 Mich. 472.) This is binding upon the Federal courts, and decisive.

The Constitution also contains an article entitled "Miscellaneous Provisions," and in this article provisions are made in reference to the acquisition of property for public use by the exercise of the right of eminent domain. If complainant's claim is sustained, the provisions of the general railroad law relating to eminent domain and providing for the acquisition of property thereby must likewise be held to be beyond the scope of the reserved right. To thus state the effect of complainant's objection is to fully answer it.

(*b*) If the provision of the general railroad law relating to taxation and which contained the exemption claimed by complainant, is a part of the general railroad law, it is beyond controversy within the reserved right to alter, amend and repeal acts of incorporation, as contained in the Constitution. Is it a part of the act of incorporation? Provisions relating to taxation have always been regarded as proper elements of a corporate charter in Michigan, and very few

acts of incorporation, general or special, can be found which do not contain a provision upon this question. The title to the general railroad law is "An act to revise the laws providing for the incorporation * * * and to fix the duties and liabilities of all railroad" corporations. The amendment of 1893, under the rule in Michigan, became a part of this act, as fully to all intents and purposes as though it had been originally contained therein (*Randall* v. *Schweikert*, 115 Mich. 386), which, as amended, constitutes the charter of the corporation organized thereunder (*Mason* v. *Perkins*, 73 Mich. 320).

Under the Michigan Constitution (§ 20, art. IV) no law can embrace more than one object, and under an act, entitled "for the incorporation" of railroad companies, it would be impossible to enact a provision referring to independent matters.

Either the exemption in question was a part of the general railroad law,—a part of the charter of the complainant and within the reserved power of the legislature, or it was a gratuity under the cases previously cited (post pages 8 *et seq*) and subject to be withdrawn at any time.

(*c*) A similar question to that here presented was before the supreme court of Maryland, in *Northern Central Railway Company* v. *State* (90 Md. 447), whose judgment was reviewed by this court in *Northern Central Railway Company* v. *Maryland* (187 U. S. 269). In those cases the railway company was the creature of a reorganization under a Constitution providing:

> "Corporations may be formed under general laws, but shall not be created by special act, * * * all charters granted or adopted in pursuance of this section and all charters heretofore granted and created subject to repeal or modification may be altered from time to time, or be repealed."

The corporation claimed that it had succeeded to a certain immunity from taxation possessed by its predecessors. The State denied the claim, and in the course of litigation

to settle the question, an act was passed, for the purpose of adjusting the differences and fixing a specific rate of taxation to be paid by the corporation, which was accepted by the railway company. Subsequently an act was passed repealing this act and it was claimed that the repealing statute violated the obligation of contract, as the exemption was not within the reserved right to alter, amend or repeal, not being a part of the act of incorporation, and being supported by sufficient consideration, namely, a compromise of the pending litigation. The State court took the view that the act did not operate to create an inviolable contract, and that the exemption conferred thereby was within the reserved right of the legislature, and subject to be withdrawn, saying:

> "'Be that, however, as it may, it was not within the power of the legislature under the Constitution of the State to grant to the appellee immunity from taxation or any other corporate privilege beyond the power of a subsequent legislature to repeal or revoke.' It is to be observed that the court does not rest the inability of the legislature to grant to a corporation an irrepealable exemption from taxation upon the form or character of the particular statute then under consideration, but puts it upon the broad ground of the want of power in the legislature under the Constitution to make such a grant at all. The court certainly in effect determines that any form of law which grants to a corporation such a corporate privilege as immunity from taxation is one passed pursuant to the section of the Constitution referred to, and is, therefore, subject to alteration or repeal by future legislatures." (90 Md. 470, 471.)

The view taken by the State court was sustained by the Federal court, which, after quoting a portion of the above language, said

> "Without pausing to consider whether, as contended, the rule as thus announced may have been in some respects too broadly stated, we think it clear

that the mere form adopted by a legislature in conferring a right on a corporation cannot be controlling, for if it were so, the provision of the Constitution, instead of being commanding and prohibitive would merely be precatory or advisory." (187 U. S. 269.)

VI.

Extent of reservation of right to alter, amend or repeal contained in general railroad law.

Not only the Constitution, but also the general railroad law, contained a reservation of the right to alter, amend or repeal; that in the general law being contained in section 11 of article V, the material portion being:

> "This act may at any time be altered, amended, or repealed, but such alteration, amendment or repeal shall not affect the rights of property of companies organized under it."

A difference in the language of the Constitution and the statute is noted. The statute providing that the exercise of the right of alteration, amendment or repeal "shall not affect the rights of property." This difference in language is not a difference in meaning,—the act expressing exactly what the Constitution implies. Provisions of Constitutions and statutes reserving absolutely the right to alter, amend or repeal, cannot and do not confer any power to affect vested property rights, as those rights are secured from violation by the Federal Constitution. (*St. L. I M. & S. R. Co.* v. *Paul* 173 U. S. 408, 409; *Smith* v. *L. S. & M. S.*, 173 U. S. 690.) Hence if the Constitutional provision would be broad enough to permit the withdrawal of immunity from taxation, such action could likewise be taken under the reserved power of the statute.

If immunity from taxation is a vested property right, it

could not be withdrawn, either under the Constitutional or the statutory provision; if it is not a vested property right, it could be withdrawn under either. We, therefore, consider the character of this immunity.

Immunity from taxation is not a property right (*Citizens' Savings Bank* v. *Owensboro,* 173 U. S. 652, 653), nor is it a franchise (*Morgan* v. *Louisiana,* 93 U. S. 221, 223), but the exemption from taxation is a mere privilege (*Wilson* v. *Gaines,* 103 U. S. 417, 421, 422; *Detroit Street Railway* v. *Guthard,* 51 Mich. 180; *St. Louis & San Francisco Railway Company* v. *Gill,* 156 U. S. 649, 650), which does not inhere in the property (*Chesapeake & Ohio Railway* v. *Miller,* 114 U. S. 176, 184).

The case of *Citizens' Savings Bank* v. *Owensboro,* supra, is decisive upon the character of immunity from taxation as being a property right or a mere privilege. In that case, the general law of the State of Kentucky contained a provision as follows:

> "That all charters and grants of or to corporations, or amendments thereof, and all other statutes, shall be subject to amendment or repeal at the will of the legislature, unless a contrary intent be therein plainly expressed: Provided, That whilst privileges and franchises so granted may be changed or repealed, no amendment or repeal shall impair other rights *previously vested.*"

It was sought to withdraw a partial exemption from taxation, and plaintiff made the claim that rights of this character were taken out of the operation of the repealing power by the proviso that "no amendment or repeal shall impair other rights previously vested," which in substance and effect is similar to the reservation of the Michigan general railroad law. Of this objection, the court said:

> "It is urged that as the act of 1856 provides that other rights previously vested could not be taken away by the repealing act, therefore the exemption from taxation could not be withdrawn; but this is a

mere form of restating the arguments already examined, and is tantamount to the reassertion of the proposition that the limited taxation established by the Hewitt act, or the one conferred by the charter, could not be taken away at all. Referring to this subject, this court in *Greenwood* v. *Freight Company* (ubi supra), said (p. 17) 'Such an act may be amended; that is, it may be changed by additions to its terms or by qualifications of the same. It may be altered by the same power, and it may be repealed. What is it that may be repealed? It is the act of incorporation. It is this organic law on which the corporate existence of the company depends which may be repealed, so that it shall cease to be a law; or the legislature may adopt the milder course of amending the law in matters which need amendment, or altering it when it needs substantial change. All this may be done at the pleasure of the legislature. That body need give no reason for its action in the matter. The validity of such action does not depend on the necessity for it or on the soundness of the reasons which prompted it.' In considering what constituted vested rights, the court clearly pointed out that rights of this character did not embrace mere privileges or franchises conferred by the granting act, and such rights obviously came within the power to repeal and amend, and were not within the category of those taken out of the reach of such power." (173 U. S. 652, 653.)

The repealing clause of the Kentucky statute was also held to be sufficient to authorize the withdrawal of exemptions from taxation in other cases (*Louisville Water Co.* v. *Clark*, 143 U. S. 1, 12, 18; *Covington* v. *Kentucky*, 173 U. S. 231, 238), sustaining clearly the proposition that immunity from taxation is not a vested property right.

See also:

Detroit Street Railway Company v. Guthard, 51 Mich. 182, 183.

Detroit v. Detroit & Howell Plank Road Company, 43 Mich. 146, 147.

(*d*) It is questionable as to whether the Michigan legislature has authority to create an inviolable contract to exempt corporations from taxation. (*Walcott* v. *People*, 17 Mich. 68, 81, 82.)

VII.

Section 3 of article III of the general railroad law does not violate the commerce clause of the Federal Constitution.

A reference to that section will indicate that neither the state nor interstate receipts are taxed, that the tax is upon the "property and business" of the corporation, and that the basis of that tax is the actual earnings of the road in Michigan, computed by adding to the income derived from its business transacted entirely within the State, such proportion of the income arising from interstate business as the length of the road over which such interstate business is carried in this State bears to the entire length of the road over which such interstate business is carried. If the tax is not on the interstate receipts, the mode of determining the amount of such tax is immaterial, and the validity of the law fixing them is a matter of legislative policy and discretion, and is not open to criticism by the courts. This is clearly indicated by the cases of *Home Insurance Company* v. *New York*, 134

U. S. 594, 600, and *Maine* v. *Grand Trunk Railway Company*, 142 U. S. 217, 228.

In *Home Insurance Company* v. *New York*, supra, in speaking of a law imposing an excise tax, it was said:

> "The validity of the tax can in no way be dependent upon the mode which the State may deem fit to adopt in fixing the amount for any year which it will exact for the franchise. No constitutional objection lies in the way of a legislative body prescribing any mode of measurement to determine the amount it will charge for the privileges it bestows." (134 U. S. 600.)

In the case of *Maine* v. *Grand Trunk Railway Company*, supra, which I consider to be decisive of this question, the amount of franchise tax upon the Grand Trunk Railway Company was by statute made to depend upon the proportion of its gross transportation receipts (both intra and interstate), found by dividing such gross receipts by the total number of miles operated, and multiplying the result by the number of miles operated within the State of Maine. It was there held that the tax imposed was valid, and that the mere fact that receipts from interstate commerce were taken as a basis for determining its amount did not affect the case. It was there said:

> "The character of the tax, or its validity, is not determined by the mode adopted in fixing its amount for any specific period or the times of its payment. The whole field of inquiry into the extent of revenue from sources at the command of the corporation, is open to the consideration of the State in determining what may be justly exacted for the privilege. The rule of apportioning the charge to the receipts of the business would seem to be eminently reasonable, and likely to produce the most satisfactory results, both to the State and the corporation taxed. * * * But a resort to those receipts was simply to ascertain the value of the business done by the corporation,

and thus obtain a guide to a reasonable conclusion as to the amount of the excise tax which should be levied; and we are unable to perceive in that resort any interference with transportation, domestic or foreign, over the road of the railroad company, or any regulation of commerce which consists in such transportation. * * * There is no levy by the statute on the receipts themselves, either in form or fact; they constitute, as said above, simply the means of ascertaining the value of the privilege conferred." (142 U. S. 228, et seq.)

Western Union Telegraph Company v. Massachusetts, 125 U. S. 530;
Pullman Palace Car Company v. Pennsylvania, 141 U. S. 18;
Pittsburgh, C. C. & St. L. R. Co. v. Backus, 154 U. S. 421;
Western Union Telegraph Company v. Taggart, 163 U. S. 1;
Adams Express Company v. Ohio State Auditor, 165 U. S. 194.

In conclusion, I submit that act 228 of 1897, revoking the exemption from taxation in question, is valid and constitutional, and that the demurrer interposed should be sustained.

CHARLES A. BLAIR,
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ROGER IRVING WYKES,
Of Counsel.

APPENDIX.

CONTAINING IN FULL

ACT 129 OF 1893

AND

ACT 228 OF 1897.

ACT No. 129 of 1893.

"An Act to amend section three of article three of act number one hundred and seventy-four of the Public Acts of eighteeen hundred eighty-three, entitled 'An act to amend sections seven, thirty, thirty-six and forty-one of article two, and sections three and five of article three, and section fourteen of article four, and to add two new sections to article two, to stand as sections forty-five and forty-six, and a new section to article five to stand as section twenty-two of an act, entitled "An act to revise the laws providing for the incorporation of railroad companies, and to regulate the running and management, and to fix the duties and liabilities of all railroads, and other corporations owning or operating any railroad in this State,"' approved May one, eighteen hundred and seventy-three, being act number one hundred and ninety-eight, session laws of eighteen hundred and seventy-three as amended by act number one hundred and seventy-four of the Public Acts of eighteen hundred ninety-one.

SECTION 1. *The People of the State of Michigan enact,* That section three of article three of act number one hundred and seventy-four of the Public Acts of eighteen hundred eighty-three, entitled 'An act to amend sections seven, thirty, thirty-six and forty-one of article two, and sections three and five of article three, and section fourteen of article four, and to add two new sections to article two, to stand as sections forty-five and forty-six, and a new section to article five to stand as section twenty-two of an act, entitled"An act to revise the laws providing for the incorporation of railroad companies, and to regulate the running and management, and to fix the duties and liabilities of all railroads and other corporations owning or operating any railroad in this State,"' approved May one, eighteen hundred and seventy-

three, being act number one hundred and ninety-eight, Session Laws of eighteen hundred and seventy-three, as amended by act number one hundred and seventy-four of the Public Acts of eighteen hundred and ninety-one, be and the same is hereby amended so as to read as follows:

SEC. 3. Every railroad company formed under the provisions of this act, or which now is or may hereafter be brought under the provisions of the general law of this State for the taxation of railway or railroad corporations, and every railroad company owning or operating any railroad situated in whole or in part in this State shall, on or before the first day of July in each year, pay to the State Treasurer on the statement of the Auditor General a specific tax upon the property and business of such railroad corporation operated within the State, which tax shall be computed in the following manner, viz.: Upon all such gross income not exceeding two thousand dollars per mile of road actually operated within this State, two per cent of such gross income; upon such gross income in excess of two thousand dollars and not exceeding four thousand dollars per mile, two and one-half per cent thereof; upon all such gross income in excess of four thousand dollars and not exceeding six thousand dollars per mile, three per cent thereof; and upon all such gross income in excess of six thousand dollars per mile, not in excess of eight thousand dollars per mile, three and one-half per cent thereof; and upon all such gross income in excess of eight thousand dollars per mile of road so operated, four per cent thereof. And when the railroad lies partly within and partly without this State, prima facie, the gross income of said company from such road for the purposes of taxation shall be on the actual earnings of the road in Michigan, computed by adding to the income derived from the business transacted by said company entirely within this State, such proportion of the income of said company arising from interstate business, as the length of the road over which said interstate business is carried in this State bears to the entire length of the road over which said

interstate business is carried. The taxes so paid shall be in lieu of all other taxes upon the properties of such companies, except such real estate as is owned and can be conveyed by such corporations under the laws of this State, and not actually occupied in the exercise of its franchises, and not necessary or in use in the proper operation of its road, but such real estate so excepted shall be liable to taxation in the same manner, and for the same purposes, and to the same extent, and subject to the same conditions and limitations as to the collection and return of taxes thereon as is other real estate in the several townships or municipalities within which the same may be situated: Provided further, That the rate of taxation fixed by this act or any other law of this State shall not apply to any railway or railroad company hereafter building and operating a line of railroad within this State north of parallel forty-four of latitude until the same has been operated for the full period of ten years, unless the gross earnings shall equal four thousand dollars per mile, except in so far as said line so built shall extend south of said parallel, but no such company shall be entitled to the immunity from taxation herein provided, when the same is owned or operated by existing companies, until the report of earnings to the Commissioner of Railroads required by the laws of this State, containing the earnings of such lines hereafter built, separate and distinct from the earnings of existing lines shall be made and filed.

All acts and parts of acts contravening the provisions of this act are hereby repealed.

This act is ordered to take immediate effect.

Approved May 27, 1893."

ACT No. 228 of 1897.

"An Act to amend section three (3) of article three (3) of act one hundred and ninety-eight (198), Session Laws of eighteen hundred and seventy-three, as amended by act forty-five (45), Public Acts of eighteen hundred and seventy-nine, as amended by act one hundred and seventy-four (174), Public Acts of eighteen hundred and ninety-one, as amended by act one hundred and twenty-nine (129), Public Acts of eighteen hundred and ninety-three, entitled 'An act to revise the laws providing for the incorporation of railroad companies, and to regulate the running and management, and to fix the duties and liabilities of all said roads and other corporations, owning or operating any railroad in this State,' approved May one, eighteen hundred and seventy-three, being compiler's section three thousand three hundred and sixty (3360), Howell's Annotated Statutes of Michigan.

SECTION 1. *The People of the State of Michigan enact,* That section three (3) of article three (3) of act one hundred and ninety-eight (198), Session Laws of eighteen hundred and seventy-three, as amended by act forty-five (45), Public Acts of eighteen hundred and seventy-nine, as amended by act one hundred and seventy-four (174), Public Acts of eighteen hundred and ninety-one, as amended by act one hundred and twenty-nine (129), Public Acts of eighteen hundred and ninety-three, entitled 'An act to revise the laws providing for the incorporation of railroad companies, and to regulate the running and management, and to fix the duties and liabilities of all said roads and other corporations, owning or operating any railroad in [this] the State,' approved May one, eighteen hundred and seventy-three, being compiler's section three thousand three hundred and sixty

(3360), Howell's Annotated Statutes of Michigan, be and the same is hereby amended so as to read as follows:

SEC. 3. Every railroad company and union railroad station and depot company owning or operating any railroad situated in whole or in part in this State, shall, on or before the first day of July in each year, pay to the State Treasurer, on the statement of the Auditor General, a specific tax upon the property and business of such railroad corporation operated within the State, which tax shall be computed in the following manner [viz.], namely: Upon all such gross income not exceeding two thousand dollars per mile of road actually operated within this State, two and one-half per cent of such gross income; upon such gross income in excess of two thousand dollars and not exceeding four thousand dollars per mile, three and one-fourth per cent thereof; upon all such gross income in excess of four thousand dollars and not exceeding six thousand dollars per mile, four per cent thereof; and upon all such gross income in excess of six thousand dollars per mile, and not exceeding eight thousand dollars per mile, four and one-half per cent thereof; and upon all such gross income in excess of eight thousand dollars per mile of the road so operated, five per cent thereof; that all gross income of union railroad station and depot companies whose earnings are in excess of twenty thousand dollars per mile shall pay on all such gross incomes in excess of twenty thousand dollars per mile of road so operated, ten per cent thereof. And when the railroad lies partly within and partly without this State, prima facie, the gross income of said company from such road for the purposes of taxation shall be on the actual earnings of the road in Michigan, computed by adding to the income derived from the business transacted by said company entirely within this State, such proportion of the income of said company arising from interstate business, as the length of the road over which said interstate business is carried in this State bears to the entire length of the road over which said interstate business is carried. The taxes so paid shall be in lieu of all other taxes upon the prop-

erties of such companies, except such real estate as is owned and can be conveyed by such corporations under the laws of this State, and not actually occupied in the exercise of its franchises, and not necessary or in use in the proper operation of its road, but such real estate so accepted shall be liable to taxation in the same manner, and for the same purposes, and to the same extent, and subject to the same conditions and limitations as to the collection and return of taxes thereon, as is other real estate in the several townships or municipalities within which the same may be situated.

All acts or parts of acts contravening the provisions of this section of this act are hereby repealed.

Approved June 4, 1897."